

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTO CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

DETROIT DIESEL CORPORATION,

Defendant-Appellee.

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UNPUBLISHED  
February 23, 2006

No. 265092  
Wayne Circuit Court  
LC No. 04-419352-CK

Before: Cooper, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

Plaintiff appeals by right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Richard Duggan, plaintiff's insured and defendant's employee, was disabled from work following a May 17, 2001, automobile accident. He began receiving work loss benefits from plaintiff and disability benefits from defendant. In exchange for immediate payment of full disability benefits, Duggan agreed to reimburse defendant from any social security benefits obtained. Duggan received a lump-sum payment of approximately \$35,000 from the Social Security Administration in October 2003 and paid most of it over to defendant. Plaintiff, who had a statutory right of setoff for the social security benefits Duggan received, MCL 500.3109(1), claimed it was entitled to half the amount defendant received under a theory of unjust enrichment.

"Restitution may be imposed under the equitable theory of implied contract or quasi-contract to prevent the unjust enrichment of one party at the expense of another." *Hofmann v Auto Club Ins Ass'n*, 162 Mich App 424, 429; 413 NW2d 455 (1987). To sustain a claim of unjust enrichment, plaintiff must establish "(1) the receipt of a benefit by defendant from plaintiff, and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 478; 666 NW2d 271 (2003). When such elements exist, "the law operates to imply a contract in order to prevent unjust enrichment." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993).

Where, as here, both the no-fault insurer and the employer have a right of setoff, each is entitled to a full setoff of the social security benefits received by the insured employee. *Grau v DAIIE*, 148 Mich App 82, 89-91; 383 NW2d 616 (1985). While both parties began paying

benefits to Duggan in 2001, neither party set off the social security benefits, apparently because the amount was not known until October 2003. Duggan contractually agreed to pay defendant a refund and turned the money over to defendant. Thus, defendant received a benefit from Duggan, not from plaintiff. It was not inequitable for defendant to receive and retain the benefit because it was entitled to a setoff according to its disability benefits plan and entitled to reimbursement pursuant to its written agreement with Duggan. Plaintiff's right of reimbursement, if any, for its unexercised right of setoff lies against Duggan, not defendant. *Michigan Ed Employees Mut Ins Co v Morris*, 460 Mich 180, 197-199; 596 NW2d 142 (1999). Therefore, the trial court did not err in granting defendant's motion.

We affirm.

/s/ Jessica R. Cooper  
/s/ Kathleen Jansen  
/s/ Jane E. Markey